

Senate Bill 143

By: Senator Wiles of the 37th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 4 of Chapter 21 of Title 15 and Chapter 12 of Title 17 of the Official Code  
2 of Georgia Annotated, relating to peace officer, prosecutor, and indigent defense funding and  
3 legal defense of indigents, respectively, so as to allow certain judicial circuits to have  
4 alternative delivery systems which opt out from having a public defender system; to allow  
5 certain judicial circuits to have alternate delivery systems which opt out from having the  
6 Office of the Georgia Capital Defender represent capital cases in the circuit; to provide for  
7 funding for such systems; to provide for related matters; to repeal conflicting laws; and for  
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Article 4 of Chapter 21 of Title 15 of the Official Code of Georgia Annotated, relating to  
12 peace officer, prosecutor, and indigent defense funding, is amended by revising Code Section  
13 15-21-74, relating to assessment and collection of penalties, as follows:

14 "15-21-74.

15 ~~The~~ Except as provided in Code Section 15-21-77, the sums provided for in Code Section  
16 15-21-73 shall be assessed and collected by the court officer charged with the duty of  
17 collecting moneys arising from fines and forfeited bonds and shall be paid over to the  
18 Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there  
19 following, to be deposited by the authority into the general treasury. The authority shall,  
20 on a quarterly basis, make a report and accounting of all funds collected pursuant to this  
21 article and shall submit such report and accounting to the Office of Planning and Budget,  
22 the Legislative Budget Office, and the Senate Budget Office no later than 60 days after the  
23 last day of the preceding quarter."

**SECTION 2.**

Said article is further amended by revising Code Section 15-21-77, relating to funding for indigent defense, as follows:

"15-21-77.

(a) An amount equal to the net proceeds derived under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73 in the immediately preceding year shall be appropriated to fund law enforcement or prosecutorial officers' training, or both, and activities incident thereto, including, but not limited to, payment or repayment to the state treasury for capital outlay, general obligation bond debt service, administrative expenses, and any other expense or fund application which the General Assembly may deem appropriate. This subsection shall not preclude the appropriation of a greater amount for this purpose.

(b) ~~It~~ Except as provided in subsection (c) of this Code section, it is the intent of the General Assembly that all funds derived under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 shall be made available through the general appropriations process and may be appropriated for purposes of funding indigent defense.

(c) ~~Where the Georgia Public Defender Standards Council~~ a judicial circuit has approved chosen to provide an alternative delivery system as set forth in Code Section 17-12-36, ~~the council shall pay from funds available to the council an amount of funds equal to the amount that would have been allocated to the circuit for the minimum salary of the circuit public defender, the assistant circuit public defenders, the investigator, and the administrative staff, exclusive of benefits, if the circuit was not operating an~~ on and after the effective date of such alternative delivery system, the court officers charged with the duty of collecting moneys arising from fines and forfeited bonds shall assess and collect the sums provided for in subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 and shall pay over to the Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there following 20 percent of the sums collected to be deposited by the authority into the general treasury. The remaining 80 percent of such sums collected shall be paid over to the governing authority to be used to fund such alternative delivery system. The court officers charged with the duty of collecting moneys arising from fines and forfeited bonds shall submit with the sums being remitted to the Georgia Superior Court Clerks' Cooperative Authority a report and accounting of all funds collected for the month."

**SECTION 3.**

Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense of indigents, is amended by revising subsection (d) of Code Section 17-12-7, relating to

councilmembers, responsibilities, voting, removal, quorum, meetings, officers, and expenses relating to the Georgia Public Defender Standards Council, as follows:

"(d) Unless otherwise provided in this article, a quorum shall be a majority of the members of the council who are then in office, and decisions of the council shall be by majority vote of the members present, except that a majority of the entire council must approve the appointment or removal of the chairperson or removal of a circuit public defender for cause pursuant to Code Section 17-12-20 ~~and an alternative delivery system pursuant to Code Section 17-12-36 and other matters as set forth in Code Section 17-12-36.~~"

#### SECTION 4.

Said chapter is further amended by revising Code Section 17-12-36, relating to alternate delivery system, as follows:

"17-12-36.

(a) ~~The council may permit a~~ A judicial circuit composed of a single county may have to continue in effect an alternative delivery system to the one set forth in this article if the governing authority of the county, in the case of a judicial circuit composed of a single county, or the governing authority of each county comprising the judicial circuit, in the case of a judicial circuit composed of multiple counties, enacts a resolution expressing its desire to have an alternate delivery system and transmits a copy of such resolution to the council with notice of the judicial circuit's intention to establish an alternate delivery system not later than November 30 of the fiscal year immediately preceding the beginning of the fiscal year in which the judicial circuit intends to begin the alternate delivery system. Notices to the council received after November 30 shall not be effective until the beginning of the second fiscal year following the receipt of the notice. The approval of such alternative delivery system by the council shall not be required.

~~(1) The delivery system:~~

~~(A) Has a full-time director and staff and had been fully operational for at least two years on July 1, 2003; or~~

~~(B) Is administered by the county administrative office of the courts or the office of the court administrator of the superior court and had been fully operational for at least two years on July 1, 2003;~~

~~(2) The council, by majority vote of the entire council, determines that the delivery system meets or exceeds its standards, including, without limitation, caseload standards, as the council adopts;~~

~~(3) The governing authority of the county comprising the judicial circuit enacts a resolution expressing its desire to continue its delivery system and transmits a copy of such resolution to the council not later than September 30, 2004; and~~

1     ~~(4) The governing authority of the county comprising the judicial circuit enacts a~~  
2     ~~resolution agreeing to fully fund its delivery system.~~

3     ~~(b) A judicial circuit composed of a single county may request an alternative delivery~~  
4     ~~system only one time; provided, however, that if such judicial circuit's request for an~~  
5     ~~alternative delivery system was disapproved on or before December 31, 2004, such judicial~~  
6     ~~circuit may make one further request on or before September 1, 2005. The council shall~~  
7     ~~allow such judicial circuit to have a hearing on such judicial circuit's request.~~

8     ~~(c) The council shall make a determination with regard to continuation of an alternative~~  
9     ~~delivery system not later than December 1, 2005, and if the council determines that such~~  
10    ~~judicial circuit's alternative delivery system does not meet the standards as established by~~  
11    ~~the council, the council shall notify such judicial circuit of its deficiencies in writing and~~  
12    ~~shall allow such judicial circuit an opportunity to cure such deficiencies. The council shall~~  
13    ~~make a final determination with regard to continuation of an alternative delivery system~~  
14    ~~on or before December 31, 2005. Initial and subsequent approvals of alternative delivery~~  
15    ~~systems shall be by a majority vote of the entire council.~~

16    ~~(d) Any circuit whose alternative delivery system is disapproved at any time shall be~~  
17    ~~governed by the provisions of this article other than this Code section.~~

18    ~~(e) In the event an alternative delivery system is approved, the council shall annually~~  
19    ~~review the operation of such system and determine whether such system is meeting the~~  
20    ~~standards as established by the council and is eligible to continue operating as an approved~~  
21    ~~alternative delivery system. In the event the council determines that such system is not~~  
22    ~~meeting the standards as established by the council, the council shall provide written notice~~  
23    ~~to such system of the deficiencies and shall provide such system an opportunity to cure~~  
24    ~~such deficiencies.~~

25    ~~(f)~~(b) In the event an alternative delivery system is approved established, it shall keep and  
26    maintain appropriate records, which shall include the number of persons represented; the  
27    offenses charged; the outcome of each case; and the expenditures made in providing  
28    services; ~~and any other information requested by the council.~~ This information shall be  
29    provided in summary form for the immediately preceding fiscal year to the Governor, the  
30    Lieutenant Governor, the Speaker of the House of Representatives, and the council not later  
31    than September 1 of each year.

32    ~~(g) In the event the council disapproves an alternative delivery system either in its initial~~  
33    ~~application or annual review, such system may appeal such decision to the Supreme Court~~  
34    ~~of Georgia under such rules and procedures as shall be prescribed by the Supreme Court."~~

**SECTION 5.**

Said chapter is further amended by adding a new Code section to the end of Article 6, relating to the Georgia capital defender, to read as follows:

"17-12-129.

(a) A judicial circuit may have an alternative delivery system for the representation of indigent capital defendants to the one set forth in this article if the governing authority of the county, in the case of a judicial circuit composed of a single county, or the governing authority of each county comprising the judicial circuit, in the case of a judicial circuit composed of multiple counties, enacts a resolution expressing its desire to have an alternate delivery system for the representation of capital defendants and transmits a copy of such resolution to the council and to the Office of the Capital Defender with notice of the judicial circuit's intention to establish an alternate delivery system not later than November 30 of the fiscal year immediately preceding the beginning of the fiscal year in which the judicial circuit intends to begin the alternate delivery system. Notices to the council and Capital Defender received after November 30 shall not be effective until the beginning of the second fiscal year following the receipt of the notice. The approval of such alternative delivery system by the council or the Office of the Capital Defender shall not be required.

(b) When a judicial circuit chooses to provide an alternative delivery system for the representation of capital defendants as provided in subsection (a) of this Code section, upon the effective date of the alternative delivery system, the Office of the Capital Defender shall no longer be notified of indigent capital defendants in such circuit and shall not undertake the representation of such defendants. The Office of the Capital Defender and any counsel appointed by a superior court judge under subsection (b) of Code Section 17-12-127 shall continue to represent those indigent capital defendants in such circuit for which representation was being provided on the effective date of the alternative delivery system in the circuit and shall continue to receive the compensation provided in subsection (b) of Code Section 17-12-127, but shall not undertake any new representation of capital defendants in such circuit.

(c) In the event an alternative delivery system is established, it shall keep and maintain appropriate records, which shall include the number of persons represented; the offenses charged; the outcome of each case; and the expenditures made in providing services. This information shall be provided in summary form for the immediately preceding fiscal year to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the council not later than September 1 of each year."

**SECTION 6.**

All laws and parts of laws in conflict with this Act are repealed.